

10 have been deleted. Attached hereto is a marked-up version of the changes made to the claims by the current amendment.

Accompanying this amendment are the following documents:

1. Information Disclosure Statement
2. PTO Form 1449 with references
3. Petition for three Month Extension
4. Stamped Postcard for return receipt
5. Version With Markings to Show Changes Made

### **Restriction Requirement**

Applicants affirm the election of Group 1, claims 1-7. Claims 8-10 have been deleted, and Applicants reserve the right to pursue the subject matter of claims 8-10 in one or more continuing or divisional applications.

### **Rejection Under 35 USC §112**

Claims 1-7 are rejected as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. The Examiner contends that the term "pore formers" is ambiguous and requires clarification in the claim language. Claim 3 has been amended to replace "pore formers" with the phrase "pore forming agent". Basis for this amendment appears in the specification on page 4, line 11. Applicants submit that pore forming agents are described on page 4, lines 2-14 and such agents are known to those skilled in the art. It is submitted therefore that the claim is not indefinite.

Claims 1 (and its dependents which include claims 2-6) and claim 7 are rejected because the term derivatives is ambiguous and requires clarification in the claim language. Applicants submit that the term "derivative" not ambiguous to one skilled in the art and furthermore the specification provides ample description of hyaluronic acid derivatives useful in the present invention for example on page 6, lines 15-22 and page 7, line 1 through page 8, line 22.

### **Rejections Under 35 USC §102**

Claims 1-4 are rejected as anticipated by Kubler et al., cited for disclosing an injectable

mixture of BMP and hyaluronic acid. Kubler et al disclose BMP/NCP (wherein NCP is noncollagenous protein components) prepared by differential precipitation. Kubler describes injection of hyaluronic acid while the BMP/NCP composition is implanted. Applicants claim an injectable composition comprising the osteogenic protein and the hyaluronic acid and therefore is not anticipated by Kubler et al.

Claims 1, 2, 4 and 7 are rejected as being anticipated by Vanis et al cited for disclosing a liquid mixture comprising calcium phosphate, hyaluronic acid and BMP. It is Applicants understanding that Vanis et al disclose a composition suitable for bone implants. Applicants injectable composition is therefore not anticipated by Vanis et al.

Claims 1-7 are rejected as anticipated by Wozney et al (US 6,187,742) cited for teaching the combination of osteogenic proteins with a number of carriers including hyaluronic acid and tricalcium phosphite and for discussing the use of the preparation by injection through a syringe. Wozney et al do not disclose the particular combination of the injectable composition claimed by Applicants comprising the osteogenic protein and hyaluronic acid.

Claims 1,2, 4 and 7 are rejected as anticipated by Johansson (US 5464440) cited for disclosing the use of BMP with hyaluronic acid and tricalcium phosphate in a polymer type carrier. Applicants invention is directed to an injectable composition and therefore is not anticipated by the implant disclosed by Johansson.

Claims 1, 2, 4 and 7 are rejected as anticipated by Rhee et al (US 5752974) cited for disclosing the combination of BMP-2 or BMP-7, a cross linked hyaluronic acid or hyaluronic acid, and tricalcium phosphate designed for injection. The disclosure cited by the Examiner at column 5, lines 51-55 is directed to cross linking hyaluronic acid and collagen together using a synthetic hydrophilic polymer. Tricalcium phosphate is disclosed at column 6 lines 49-57 as part of a composition comprising collagen. Applicants submit that Rhee et al does not anticipate Applicants claimed invention comprising osteogenic protein and hyaluronic acid for injectable delivery useful for the formation of cartilage and/or bone and repair of tissue damage and fractures.

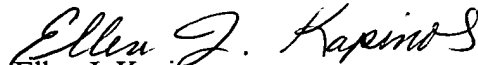
Claims 1-5 and 7 are rejected as being anticipated by Valentini et al US 59399323 cited for disclosing the combination of esterified hyaluronic acid, NaCl and BMP which can be injectable pastes. It is Applicants understanding that Valentini does not disclose an injectable composition comprising an osteogenic composition and hyaluronic acid.

Claims 1-7 are rejected as anticipated by Schug et al (WO 9722308) and by Suhonen

et al (US 613 2214) cited for disclosing the combination of esterified hyaluronic acid tricalcium phosphate, PEG and BMP designed for use in an injection instrument. Applicants submit that Schug et al and Suhonen et al disclose an implant device not an injectable composition comprising an osteogenic protein and hyaluronic acid.

Reconsideration of the application and entry of the amendments is requested. Should the Examiner believe that a telephonic interview would assist in clarifying any remaining issues, the Examiner is invited to call the undersigned attorney at the telephone number provided below. If any additional fee is due with regard to this paper, Applicants hereby authorize payment of such fee from deposit account 07-1060.

Respectfully submitted,

  
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**In the Claims:**

Claims 3 has been amended as follows:

3.(amended) The composition of claim 1 further comprising a pore ~~former~~ forming agent.

Claims 8-10 have been deleted.